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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

Nos. 776 and 780

THE CALIFORNIA COMPANY and THE SUPERIOR OIL COMPANY,

Petitioners,

v.

THE UNITED GAS IMPROVEMENT COMPANY and PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,

Respondents.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK IN OPPOSITION.

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BARBARA M. SCHOW

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

Nos. 776 and 780

THE CALIFORNIA COMPANY and THE SUPERIOR OIL COMPANY,

Petitioners,

v.

THE UNITED GAS IMPROVEMENT COMPANY and PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,

Respondents.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK IN OPPOSITION.

Statement.

For the reasons set forth in the brief for co-respondent The United Gas Improvement Company, in opposition to the instant petitions for certiorari, and for the additional reasons set forth in the brief for respondent Public Service Commission of the State of New York, in opposition to the petitions for certiorari to the United States Court of Appeals for the District of Columbia Circuit in *Shell Oil Company, et al. v. PSC, NY* and *Hope Natural Gas Company, et al. v. PSC, NY*, Sup. Ct., Oct. Term, 1960, Nos. 774 and 793, we oppose the instant petitions for certiorari.

In our view, any review by this Court of (a) the determination below, (b) that involved in Nos. 774 and 793, or (c) those involved in any petition for certiorari which may be filed with respect to the related determinations of the Fifth[1] and Tenth[2] Circuits, necessarily would entail the following questions:

(1) Did the Court[s] below commit reversible error in ordering remanded to the Federal Power Commission, August 10, 1959 unconditional certifications of pinnacle-high Southern Louisiana gas producer sales prices, issued by FPC upon records of no better support therefor than those this Court reviewed and ordered remanded in *Catco*[3] on June 22, 1959 and in *Transco-Seaboard*[4] on December 14, 1959?

(2) Could the FPC evade, properly discharge or preclude its *Catco* (22.4¢ per Mcf) and *Transco-Seaboard* (23.3¢ per Mcf) remand assignments (to "hold the line" against unsupported and therefore unwarranted producer price increases such as those) by blithely continuing to certificate unconditionally Catco and Transco-engendered, as high or higher prices (23.8¢ per Mcf) upon equally deficient records compiled before this Court spoke on the subject?

(3) Could the FPC establish the existence and the propriety of that pinnacle-high price line—or any other—simply by making general reference to other Catco and Transco-like, outstanding certifications nearly all of which were then under pending review and destined for reversal?

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[1] *United Gas Improvement Co.* v. *Federal Power Commission*, USCA, 5th, Nos. 18112 and 18113, February 22, 1961 (see Pet. No. 774 at pp. 56-66 and 67-68). These cases are pending on applications for rehearing filed by intervenors.

[2] *United Gas Improvement Co.* v. *Federal Power Commission* USCA, 10th, No. 6280, January 23, 1961 (see Pet. No. 774 at pp. 49-55). Issuance of the mandate has been stayed to April 23, 1961 on application of intervenors.

[3] *Atlantic Refining Co., et al.* v. *PSC, NY*, 360 U.S. 378.

[4] *Public Service Commission of New York* v. *Federal Power Commission*, 361 U.S. 195.

In our view, the opinion below of October 31, 1960,[5] that of the DC Circuit of December 8, 1960,[6] the Tenth Circuit of January 23, 1961,[7] and those of the Fifth Circuit of February 23, 1961[8] reflect, uniformly and abundantly, that the answer to each of the above inquiries would have to be in the negative.

Conclusion.

Since each is a correct application of *Catco*, and since the principal design of the petitions is nothing more than an effort to re-argue *Catco* and *Transco-Seaboard* before this Court, it is respectfully suggested that the instant petitions present no issue warranting this Court's review. All of them should be denied.

Respectfully submitted,

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Of Counsel
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Date: March 27, 1961

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[5] Pet. No. 776 at pp. 1a-16a; Pet. No. 780 at pp. 1a-16a.
[6] Pet. No. 774 at pp. 28-33.
[7] Pet. No. 774 at pp. 49-55.
[8] Pet. No. 774 at pp. 56-66 and 67-68.